



Department of Public Advocacy  
Kentucky's statewide public defense system

Public Safety and Offender Accountability Act, HB 463 ( 2011)  
**Implementation and Recommendations  
to Further Advance the Policies within the Act**

Kentucky Criminal Justice Council  
Ed Monahan  
Public Advocate  
September 16, 2015

# **Safe reduction of costs**

- 1. Costs have been safely reduced as a result of HB 463**
- 2. However, incarceration costs to counties and the state continue to drain local and state resources beyond what is necessary to ensure public safety**
- 3. There are commonsense ways to reduce costs and maintain public safety**
- 4. Additional reductions in waste are achievable in 2016**

# Our context

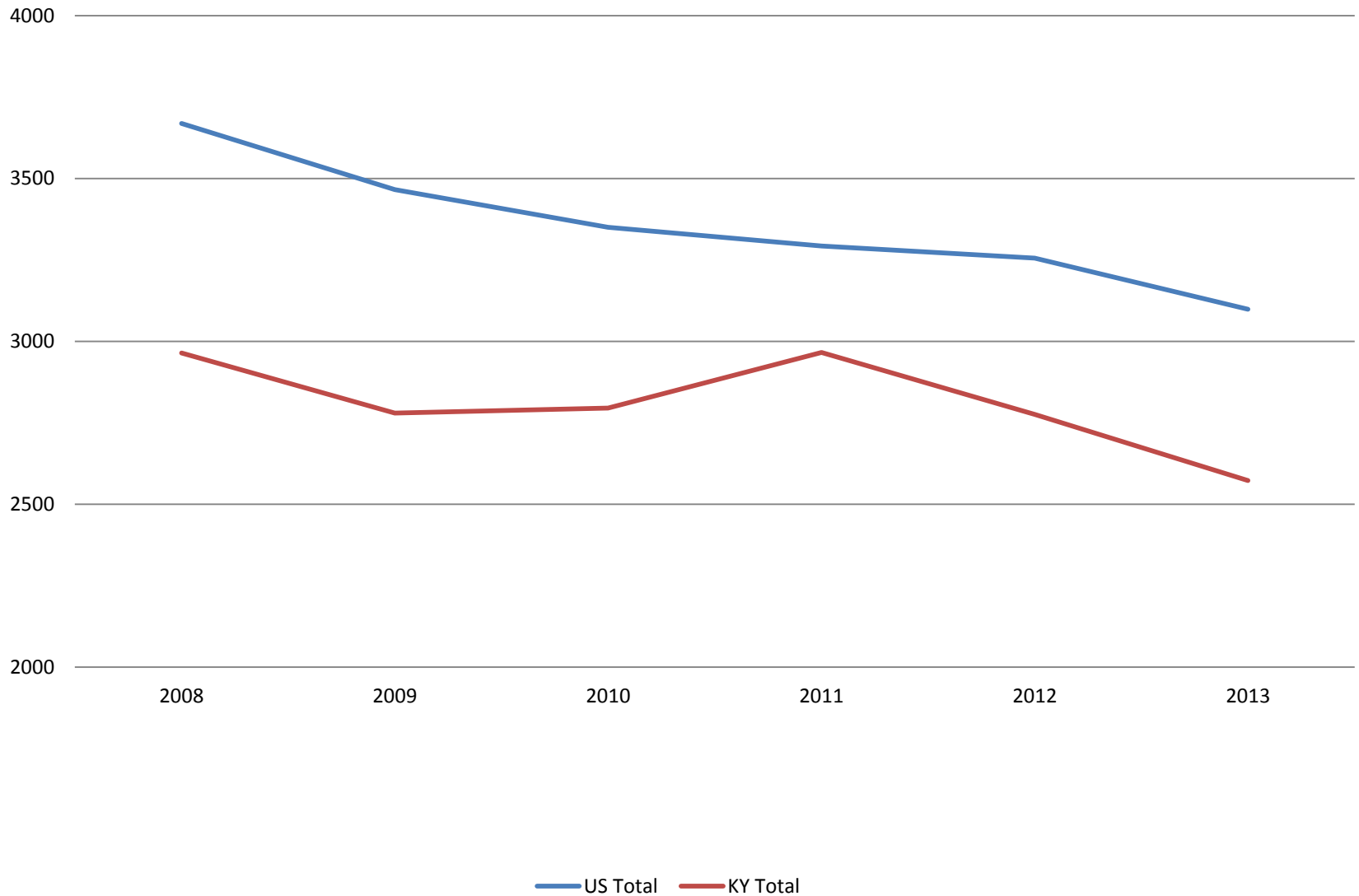
## Six KY criminal justice facts

1. US and KY crime and violent crime rates continue to decline
2. HB 463 is saving taxpayers much money but more reform is needed for further savings
3. KY inmate population is increasing beyond adjusted projections
4. Many low risk inmates, over **30%**, are not being paroled at great cost to taxpayers
5. Cases in the KY criminal justice system continue to decline:  
since 2007, an overall decline of **42,040** cases  
since 2009 DUI cases declined by **7,921**
6. Pretrial release is up **3%** statewide saving counties significant money, yet many low and moderate risk persons are in jail awaiting trial at significant cost to counties

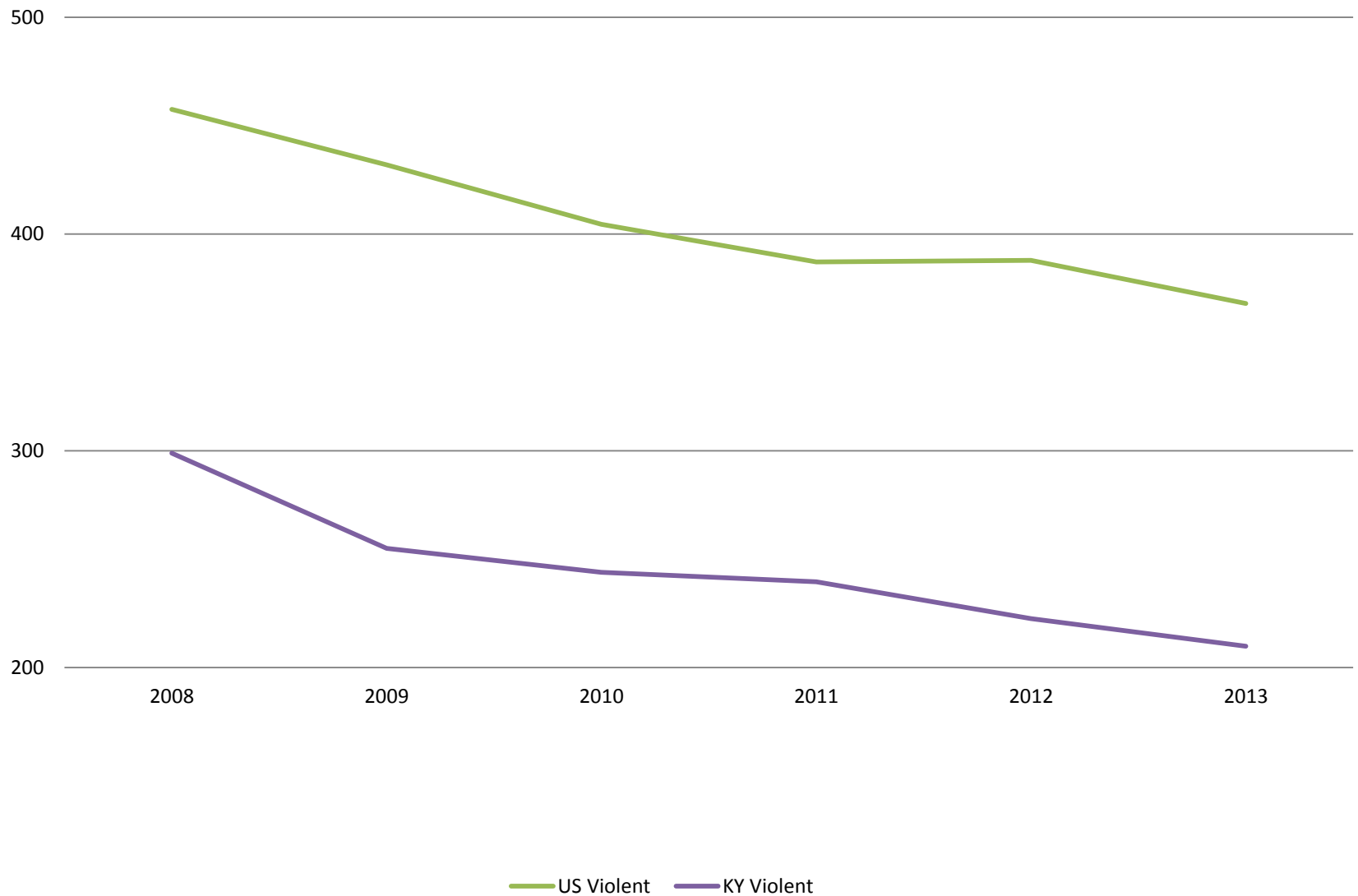
# **Further reducing incarceration costs long term in a sustainable way must include**

- 1. Reducing admissions**, including revocations to prison from probation and parole, and
- 2. Reducing length of stay** including the length of stay for those convicted of serious and violent crimes

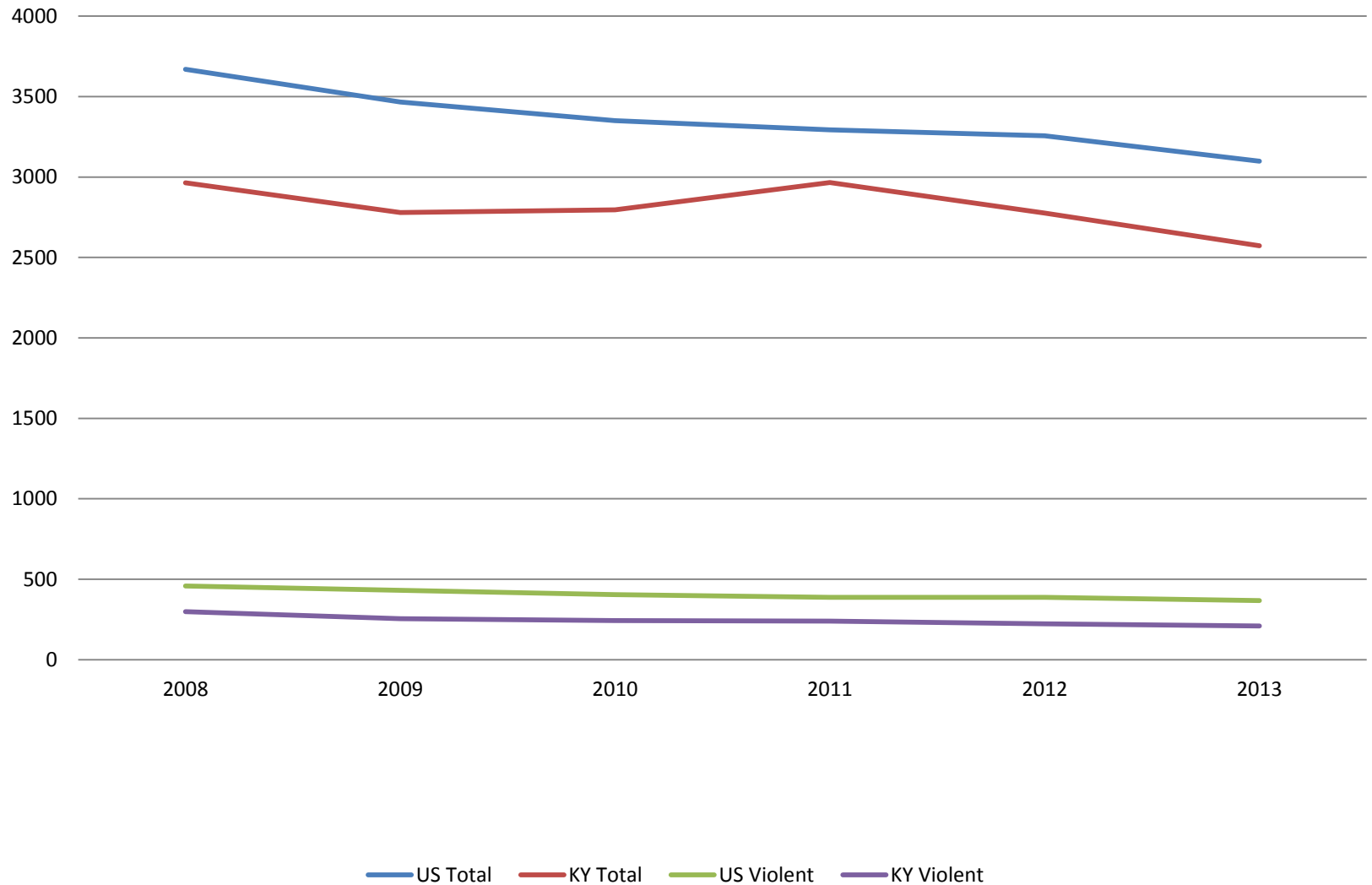
# US and Kentucky crime rates continue to **DECLINE**



# US and Kentucky violent crime rates 2008-2013



# US and Kentucky crime rates 2008-2013 are **BELOW** national levels



# McCracken County

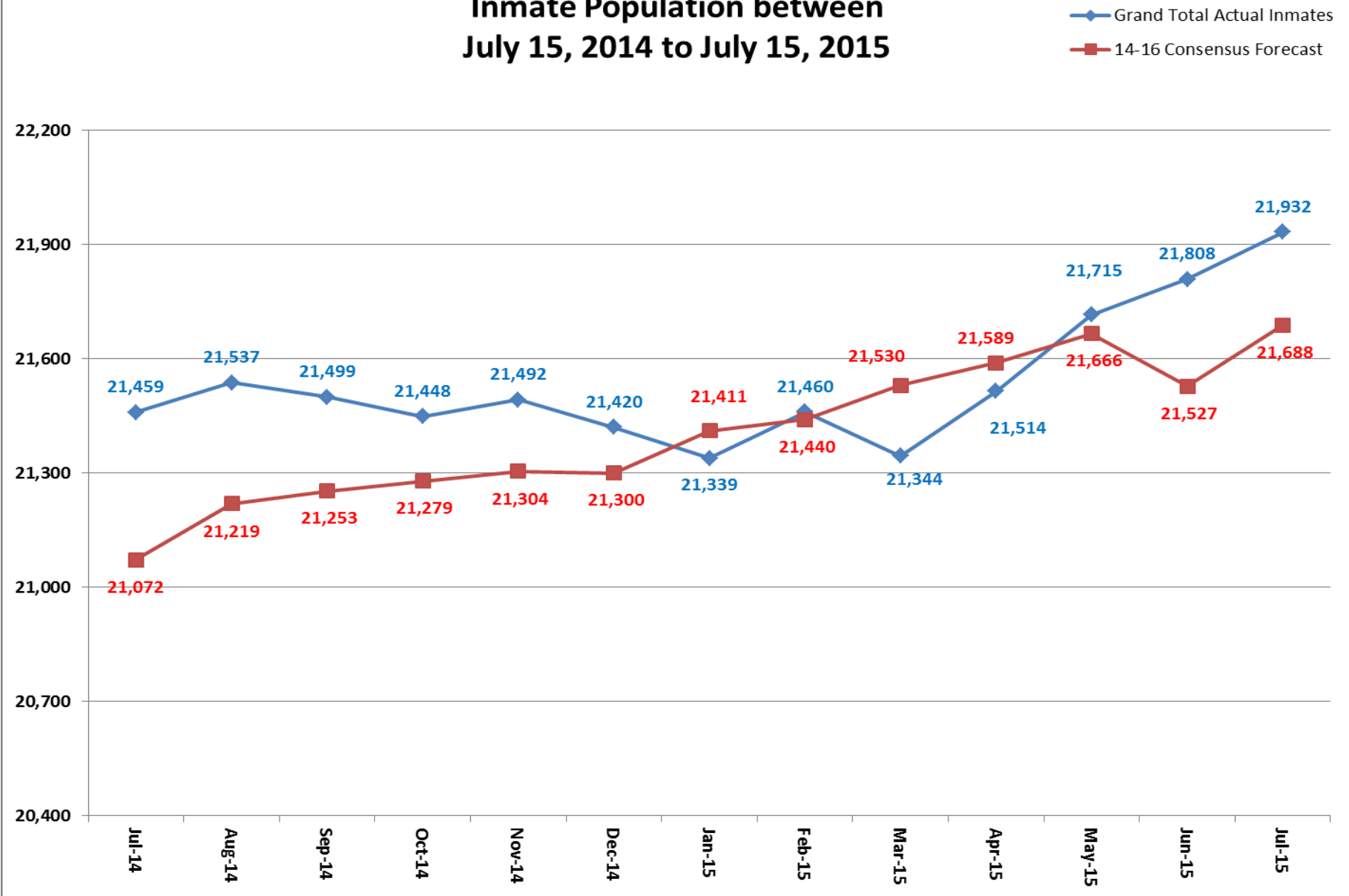
AOC Criminal Cases Opened in McCracken County		
	<i>2006</i>	<i>2014</i>
Circuit Court Criminal Cases Opened	708	651
District Court Felony Cases Opened	1,065	771
District Court Misdemeanor Cases Opened	2,760	2273
	<i>2008</i>	<i>2014</i>
DUI Cases Opened in District Court	959	432



# Fayette County

AOC Criminal Cases Opened in Fayette County		
	<i>2006</i>	<i>2014</i>
Circuit Court Criminal Cases Opened	2,062	1,664
District Court Felony Cases Opened	4,460	3,285
District Court Misdemeanor Cases Opened	14,098	10,648
	<i>2008</i>	<i>2014</i>
DUI Cases Opened in District Court	2,879	1,620

## Inmate Population between July 15, 2014 to July 15, 2015

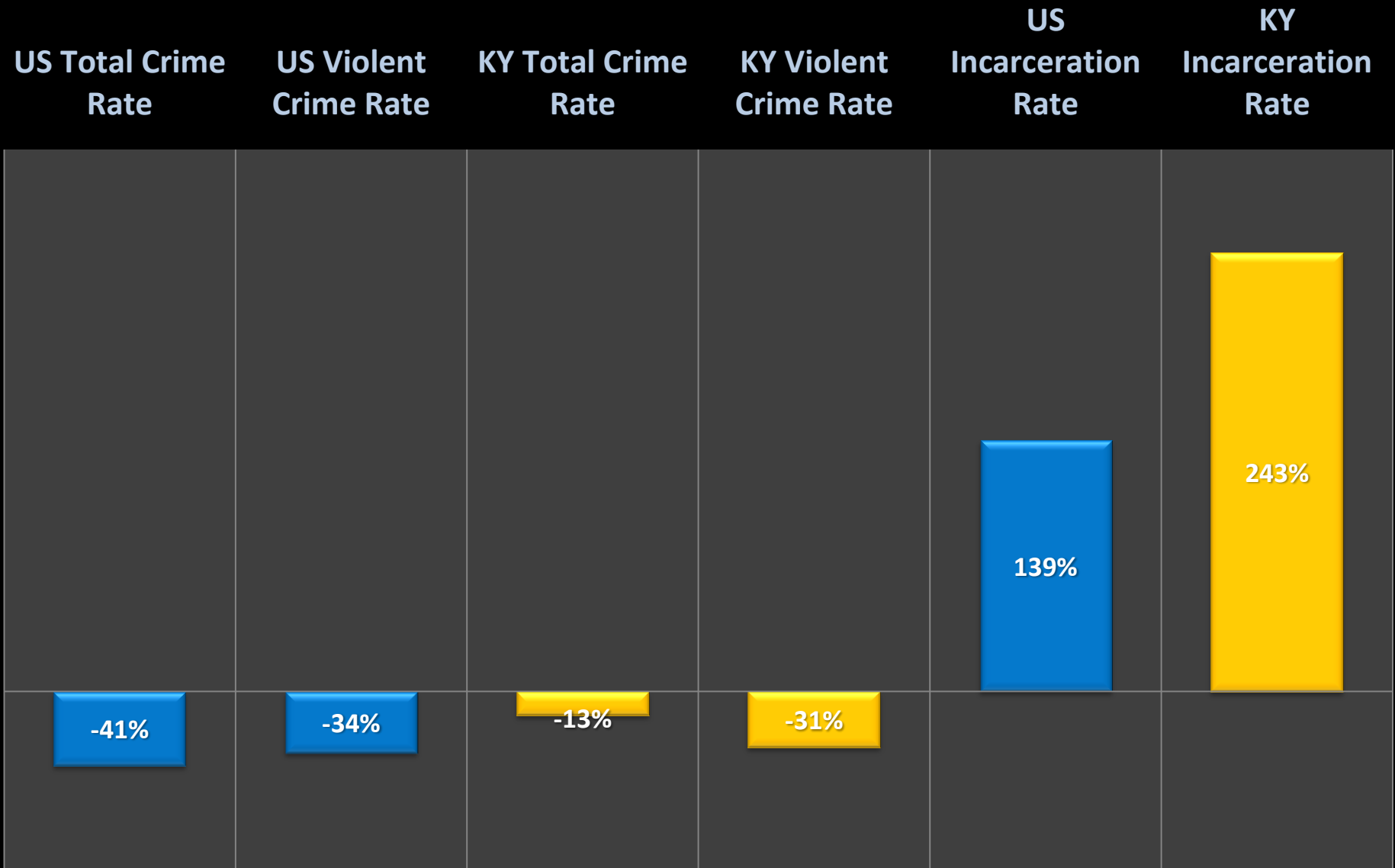


The 2014-16 biennial budget consensus blended population projections are used for July 2014 – forward.

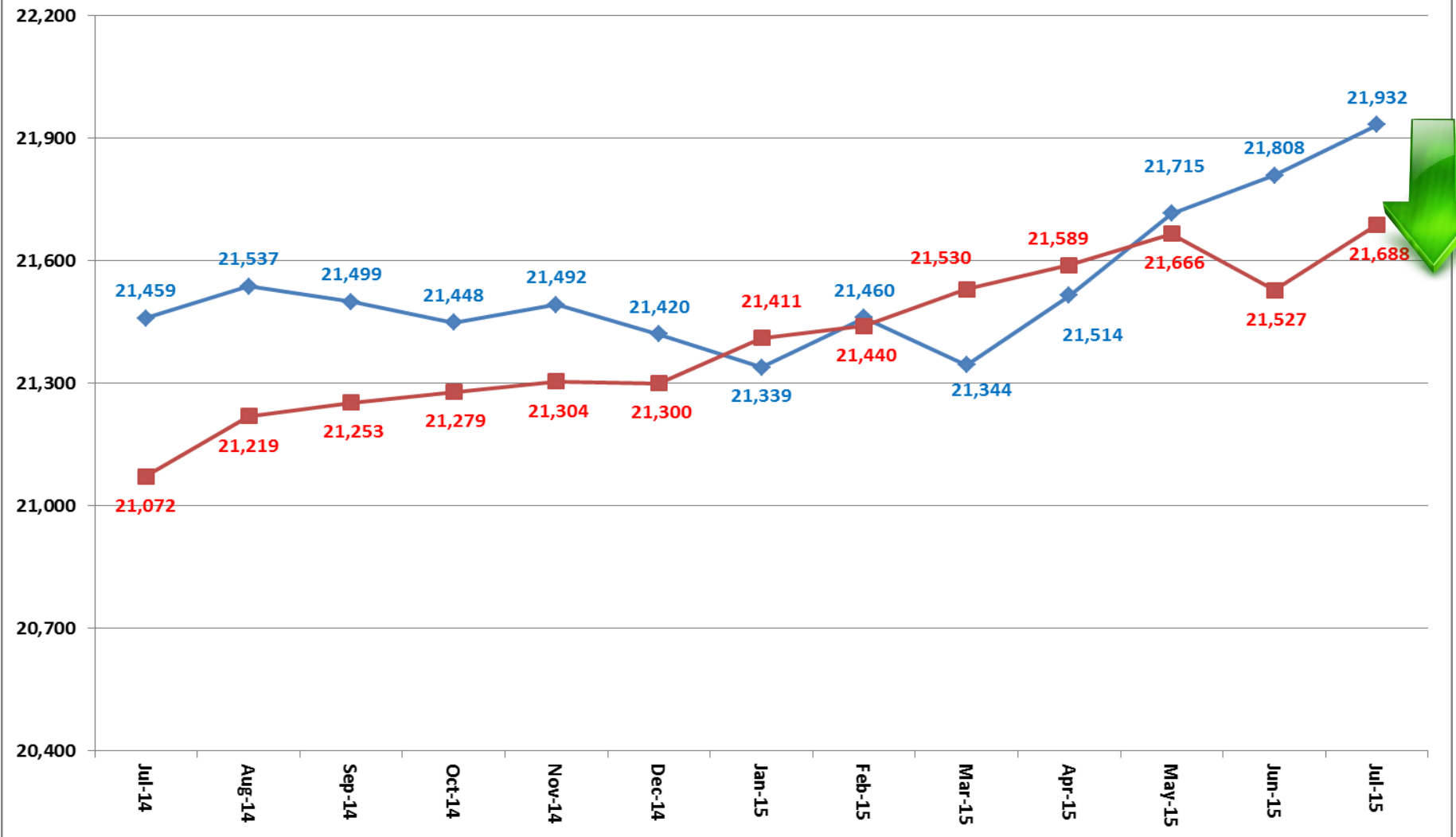
## Necessary Governmental Expenses for KY Corrections Due to State Inmates Above Projections



# Divergent Trends in Incarceration and Crime Rates, US and KY, 1985-2012

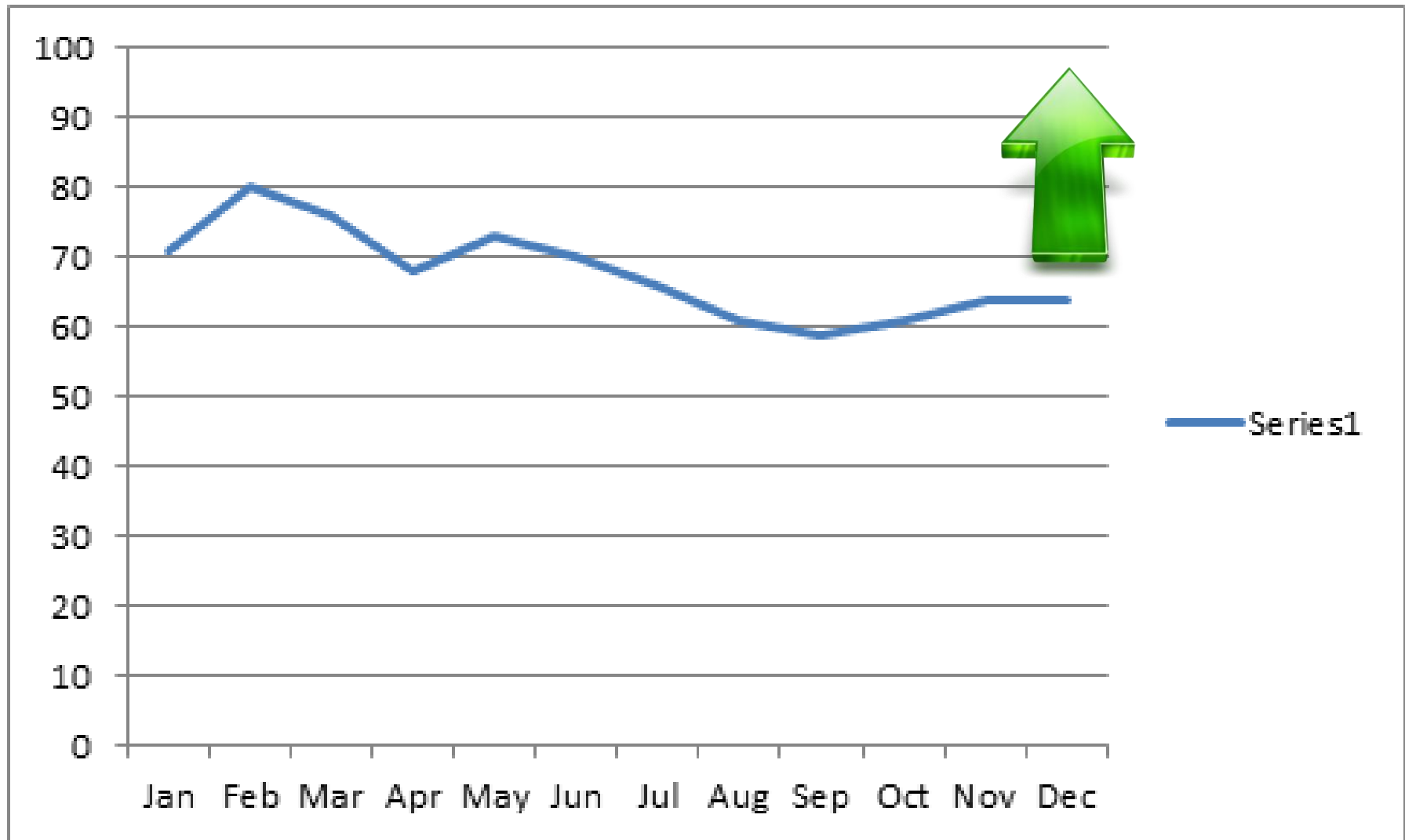


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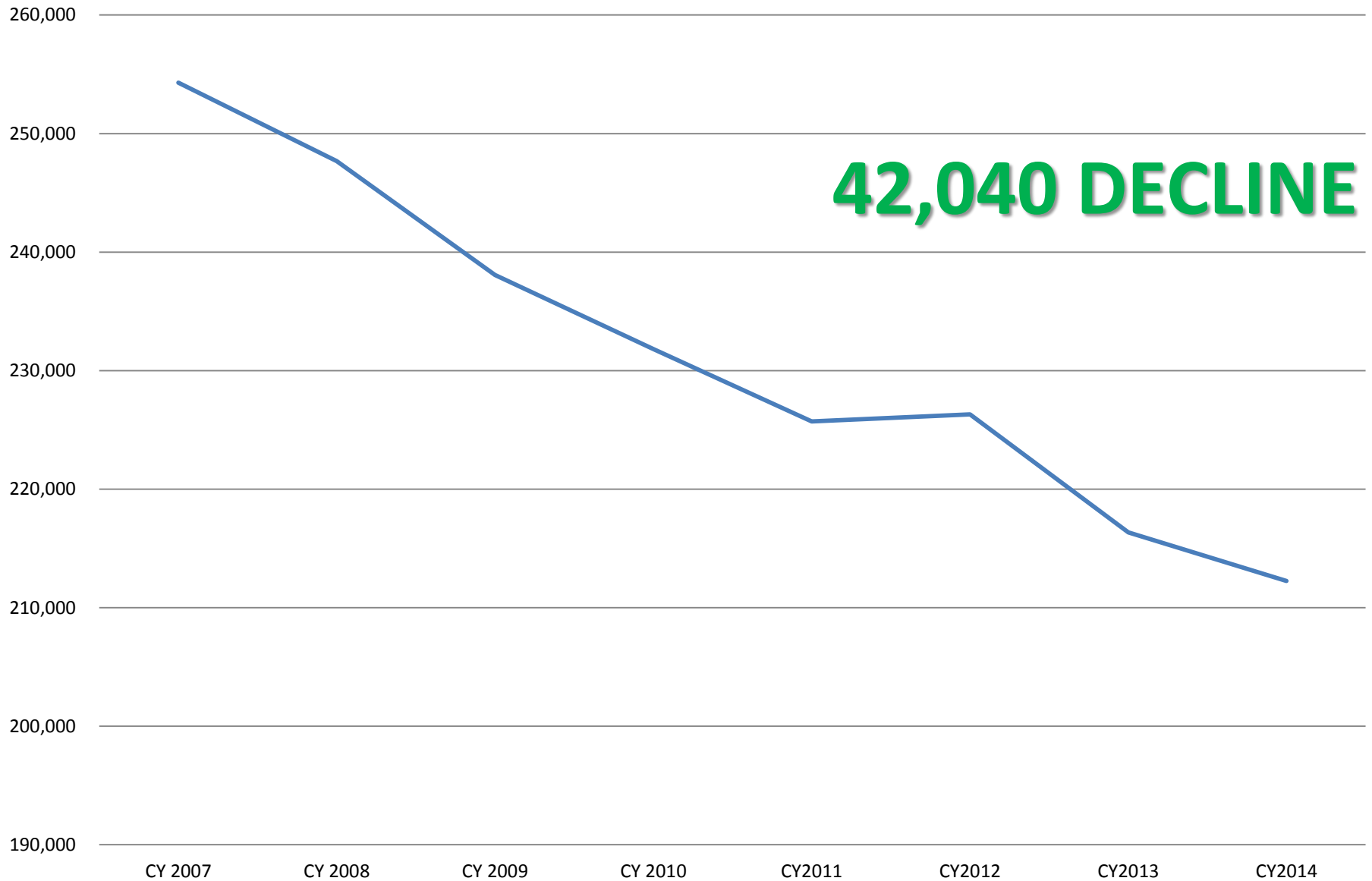


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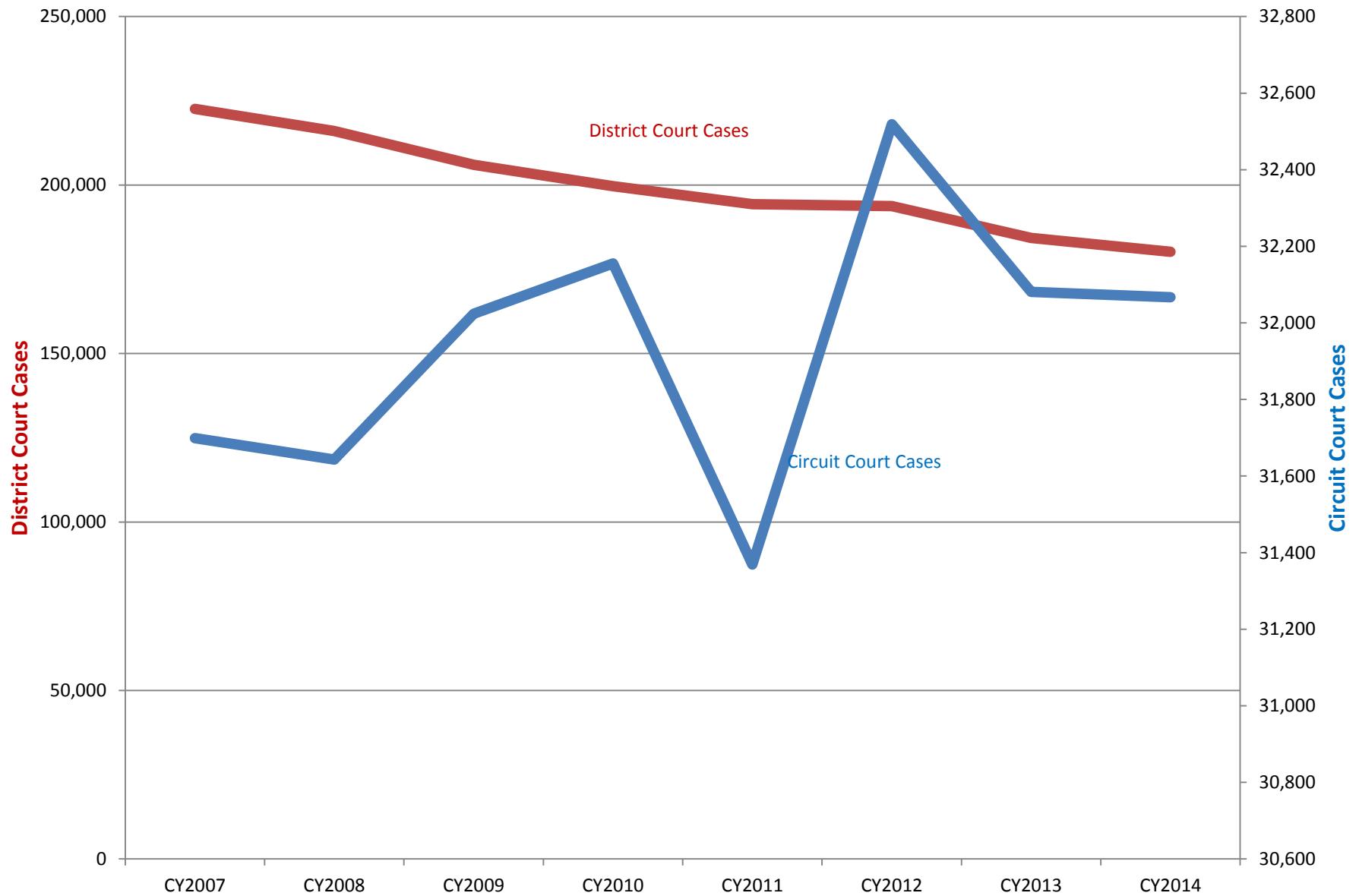
# Parole Rate of Inmates with the LOWEST evidence-based, validated risk assessment level score, January 2013 - July 2015



# TOTAL CIRCUIT COURT AND DISTRICT COURT CASES OPENED, CY 2007 THROUGH CY 2014



# CIRCUIT COURT AND DISTRICT COURT CASES OPENED CY 2007 THROUGH CY 2014





# AOC criminal cases CY2007-2014

	CIRCUIT CASES	DISTRICT CASES	COMBINED
CY2007	31,699	222,586	<b>254,285</b>
CY2008	31,643	216,029	247,672
CY2009	32,024	206,040	238,064
CY2010	32,155	199,666	231,821
CY2011	31,369	194,346	225,715
CY2012	32,519	193,780	226,299
CY2013	32,081	184,280	216,361
CY2014	32,067	180,178	<b>212,245</b>

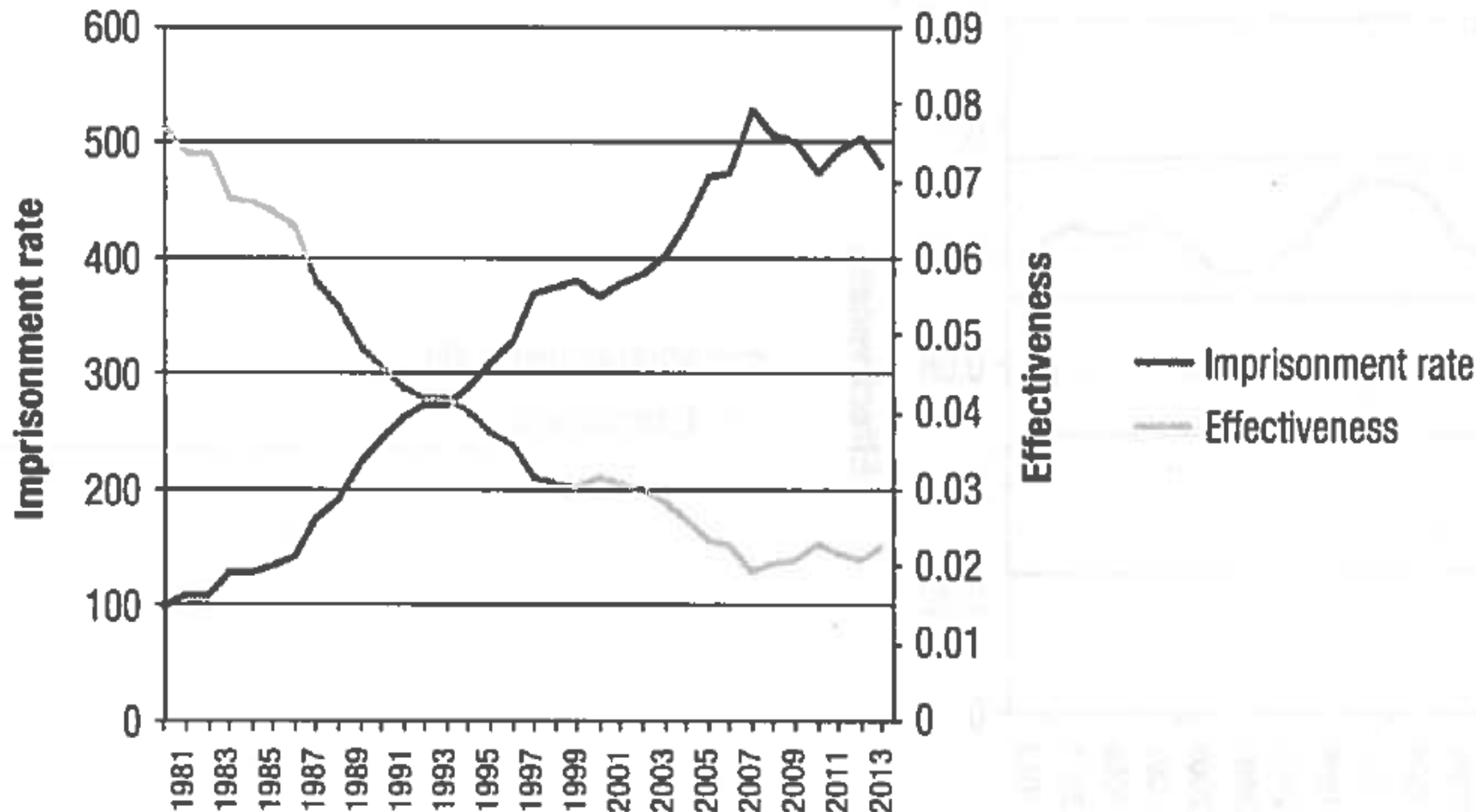
# AOC DUI cases CY2009-2014

**7,921 DECLINE**

Filings		CY 2009	CY 2010	CY 2011	CY 2012	CY 2013	CY 2014
1st DUI	Charges	31,596	29,781	29,966	29,784	27,703	25,797
	Cases*	28,732	26,650	26,538	26,426	24,425	22,938
2nd DUI	Charges	7,607	6,843	6,491	6,272	5,836	5,413
	Cases*	7,088	6,322	5,943	5,785	5,378	5,021
3rd DUI	Charges	1,989	1,831	1,682	1,603	1,448	1,348
	Cases*	1,868	1,715	1,565	1,492	1,354	1,266
4th DUI	Charges	605	473	438	364	276	266
	Cases*	598	467	432	359	271	261
Total	Charges	41,797	38,928	38,577	38,023	35,263	32,824
	Cases*	35,435	32,654	32,037	31,821	29,320	27,514

# Diminishing returns

Kentucky

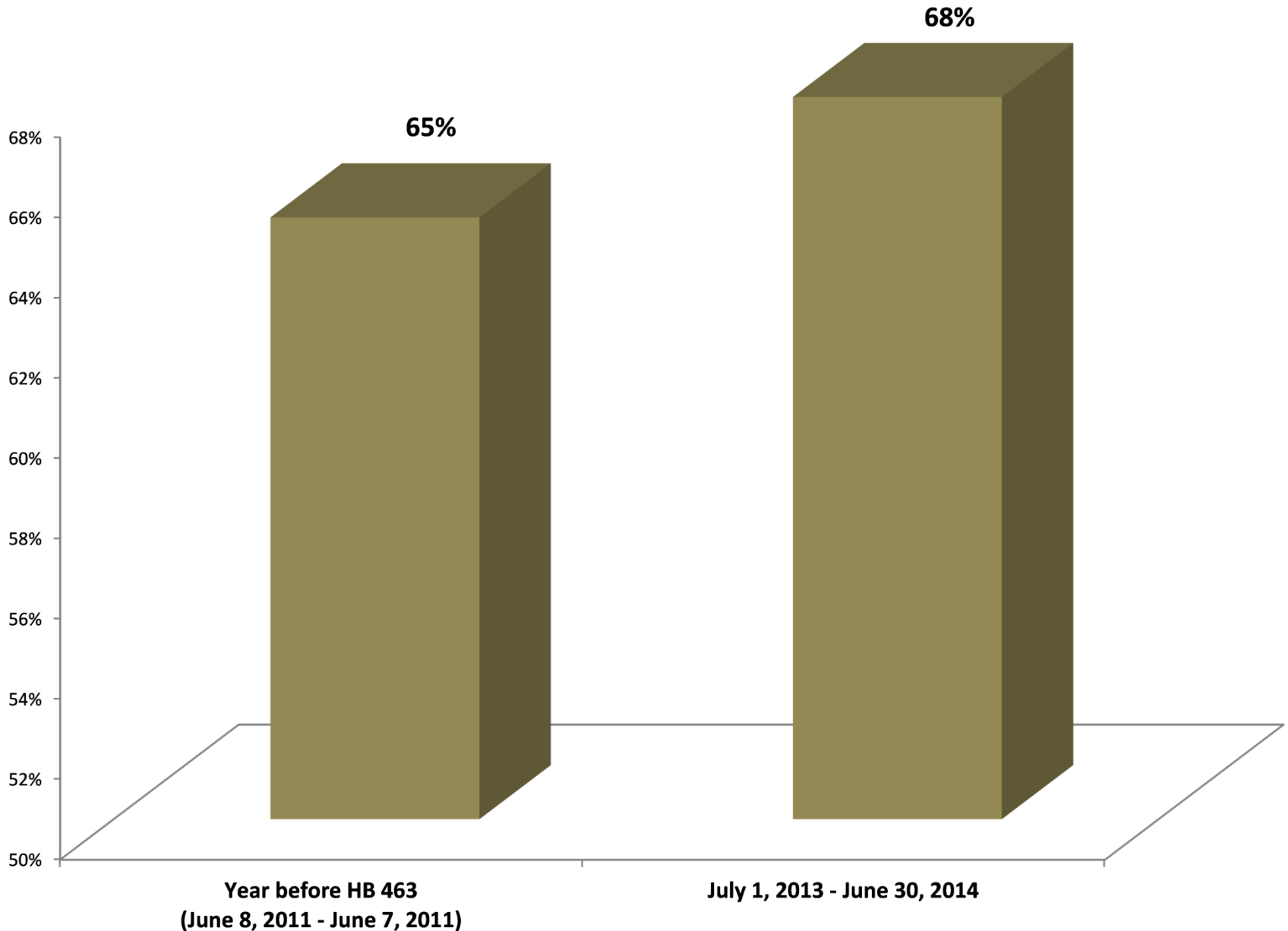


Dr. Oliver Roeder, Lauren-Brooke Eisen, and Julia Bowling,  
WHAT CAUSED THE CRIME DECLINE? Brennen Center for Justice (2015)

# Diminishing returns: why?

1. Overuse of incarceration leads to ineffectiveness as less-serious offenders dominate prison populations
2. Prison can cause prisoners to commit more crimes upon release
3. Deteriorating conditions inhibit rehabilitation and increase recidivism
4. Incarceration serves as less of a deterrent the more it is overused

# After Implementation of HB 463, Pretrial Release Rates Increase 3% Statewide



**Because of HB 463  
counties have saved  
many millions in jail costs**

**...BUT**

**MANY in jail pretrial are low or  
moderate risk**

That means there are unnecessary jail costs

# **10 commonsense ways to reduce waste in Kentucky's criminal justice system and reduce costs for counties and the state**

*Lasting and unrealized benefits of HB 463*

## **Substantial Savings from**

1. Reclassifying minor misdemeanors to violations
2. Creating "gross misdemeanor" classification for low level felonies
3. Promoting employment, reducing recidivism: create Class D felony expungement
4. Reducing days in the county jail by creating "clear and convincing" standard for the pretrial release decision
5. Presuming parole for eligible low-risk offenders
6. Modifying violent offender and PFO statutes
7. Providing alternative sentencing plans for flagrant non-support instead of imprisonment for felony
8. Creating alternatives to incarceration
9. Increase the felony theft limit from \$500 to \$2,000
10. Reducing waste by limiting capital prosecutions

**“for every dollar spent on the DPA  
alternative sentencing program, there  
was a savings of \$4.47 to \$6.80.”**



**THE KENTUCKY DEPARTMENT OF PUBLIC ADVOCACY SOCIAL WORKER ALTERNATIVE  
SENTENCING PROGRAM PILOT EVALUATION STUDY 2013, Robert Walker, M.S.W., L.C.S.W.,  
Jennifer Cole, M.S.W., Ph.D., Jaime Miller, B.A.  
University of Kentucky Center on Drug and Alcohol Research**





## Safely reducing county and state incarceration costs in 2015

Rep Brent Yonts, Vice Chair, House Judiciary  
Chair House State Government Committee

- **HB 305** - Reduce low level misdemeanors to violations with pre-payable fines, saving jail, prosecution, and defense expenses;
- **HB 286** - Permit local jailers to grant limited service credits against an inmate's sentence for good behavior and educational achievement, saving jail costs and encouraging good behavior, and also mandate alternative sentencing for flagrant non-support instead of imprisonment, saving prison costs and better enabling delinquent parents to work to support their children;
- **HB 285** - Require parole after a fixed period for nonviolent offenders serving a Class D sentence and release for misdemeanants who have good behavior, saving county and state incarceration costs;
- **HB 284** - Adopt a “clear and convincing” standard for pretrial release decisions and require findings specific to the defendant, guaranteeing that defendants who are low-risk and entitled to release are not needlessly held in jail at county expense; and
- **HB 304** - Modify the persistent felony offender statute, saving prison costs by reserving the highest sentences for violent offenders and career criminals.

# Reduce low level non-violent misdemeanors to pre-payable violations

- Reduction of minor non-violent offenses would save:
  - County jail expenses by eliminating incarceration;
  - County and State prosecution expenses by removing cases from court;
  - State judicial branch expenses by reducing court dockets; and
  - State public defender expenses, by eliminating the right to appointed counsel for these offenses.
- Offenders would still be held accountable with fines and convictions.
- Offenses include Possession of Marijuana, Possession of Drugs in Improper Container, Possession of Drug Paraphernalia, Criminal Trespass in the Second and Third Degrees, Criminal Littering, Unlawful Assembly, and Disorderly Conduct in the Second Degree.
- Filed in 2015 as House Bill 305

# **Create a Gross Misdemeanor classification for some serious non-violent offenses**

- Gross Misdemeanors would carry sentences up to 24 months with presumptive probation. Sentences, if served, would for all purposes be treated as state sentences.
- Offenders would be held accountable through penalties, supervision, and conviction, but would not face the lifelong consequences of a felony conviction.
- Flagrant Non-support would be deemed a Gross misdemeanor. Delinquent parents could work on probation to support children without the employment limitations of being a convicted felon.
- Gross Misdemeanors would save State Correctional costs by reducing some Class D sentences and presumptively requiring probation instead of incarceration.
- Filed in 2015 as House Bill 286

# Characteristics of gross misdemeanors

- Penalty range - 6 months to 2 years
- Prosecuted in circuit court
- State prisoners authorized to be housed in county jails
- Conviction would not lead to collateral penalties relating to felonies
- Automatic or highly presumptive probation
- 2-year probationary period
- Expungeable

# Benefits

- Reduces prison population by lowering the sentence for many non-violent offenses
- Helps reentry and reformation efforts by eliminating the convicted felon label
- Holds offenders accountable with sentences of at least six months and up to two years
- Maintains jurisdiction in circuit court and with the Department of Corrections to avoid increase in county expenditures

# Felony Flagrant Nonsupport data

- Felony Flagrant Nonsupport offenders incarcerated in FY 2015 – 678
- Felony offenders incarcerated on Flagrant Nonsupport *only* in FY 2015 – 249
- Average sentence length for FY 2015 Flagrant Nonsupport only offenders – 1,662 days (4.55 years)
- Total Time served in FY 2015 by Flagrant Nonsupport only offenders – 54,989 days

***A minimum of \$3.8 million per year is spent incarcerating the 249 persons only there on a Nonsupport sentence.***

# **Require parole for eligible non-violent Class D offenders**

- After serving prison time to reach their eligibility date, parole would be granted without a hearing to all Class D inmates unless they are:
  - A violent offender,
  - A sex offender, or
  - Found to have committed a violent disciplinary violation while incarcerated.
- Mandatory parole would save the State Correctional costs currently being spent on non-violent offenders who are denied parole by the Parole Board.
- Filed in 2015 as House Bill 285

# Create a mechanism for early release of non-violent misdemeanants

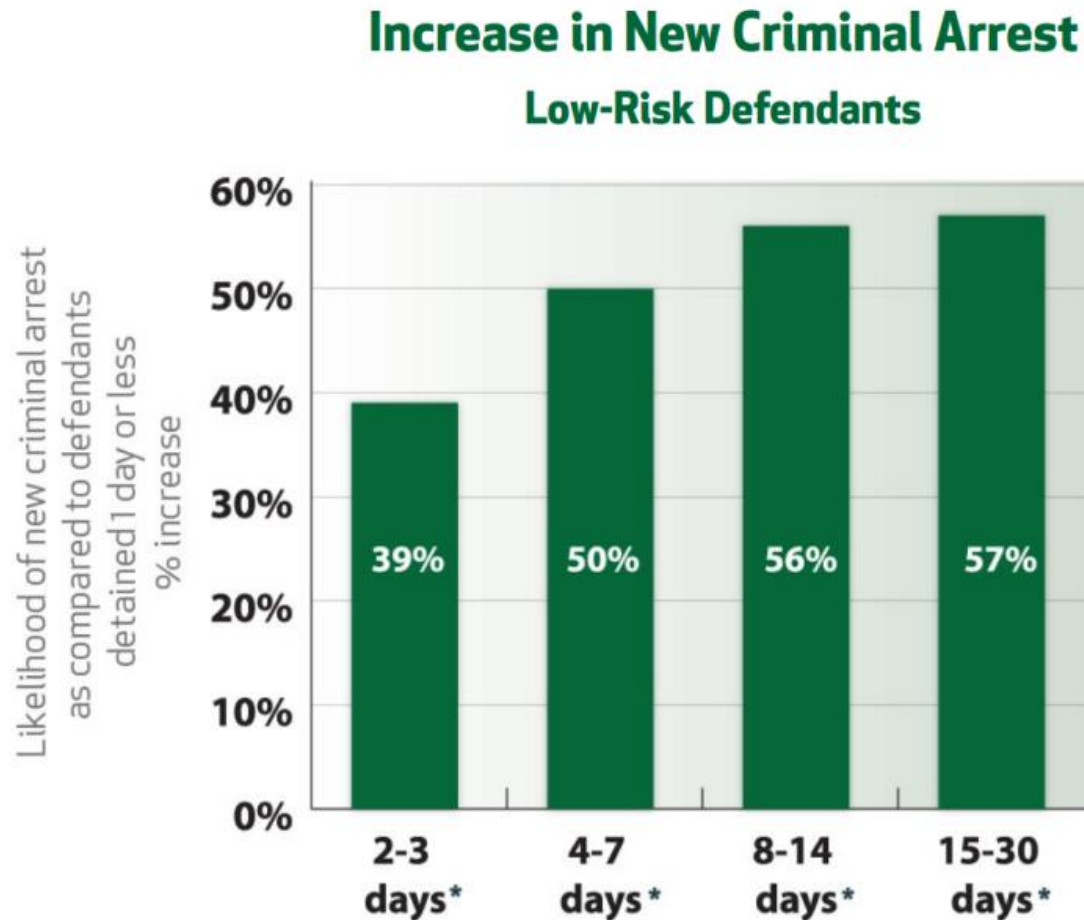
- Good behavior, educational, and service credits now available only to felons would be extended to jail inmates.
- Conditional discharge of the remaining sentence of some non-violent misdemeanants would be required after service of 30 to 60 days.
- Conditional release of non-violent misdemeanants would save county jail expenses.
- Filed in 2015 as House Bill 285



## **Adjust pretrial release standard to ensure House Bill 463 requirement for release of low-risk defendants is consistently applied**

- HB 463 required pretrial release without bond for low and moderate risk defendants unless specific conditions are present (risk of flight or danger to others). In some courts, the exceptions have become more common than the rule;
- A court decision denying pretrial release to a low-risk defendant would have to be supported by clear and convincing evidence that the defendant is a risk of flight or a danger to others. Appellate review would result in consistent practices statewide;
- Consistent pretrial release, as intended by HB 463, would save county expenses currently being spent housing low-risk defendants who are not a danger to the public.
- Filed in 2015 as House Bill 284

# **WASTE:** Low risk inmates in jails



\* = statistically significant at the .01 level or lower

# **Modify the persistent felony offender statute to reserve the highest sentences for violent offenders and career criminals**

- PFO sentencing would be available if the offender:
  - Has twice previously been convicted of felony offenses or has a prior conviction for a crime against a minor (same as current requirements for PFO, 1<sup>st</sup> Degree); and
  - Is convicted of a violent offense.
- The jury, considering the facts of an individual case and defendant, could elect not to use PFO to raise the defendant's sentence.
- Prior felonies would be limited to those for which a sentence was completed within the past 15 years.
- Filed in 2015 as House Bill 304

**In FY14, the Commonwealth spent \$65,388,822 to incarcerate 2,967 individuals serving PFO-enhanced sentences for non-violent offenses. The average sentence of these individuals is more than 20 years. By the end of their sentence, the total cost will be more than \$1.3 billion to house these non-violent offenders.**

# Proposed adjustments to Kentucky's PFO law (KRS 532.080)

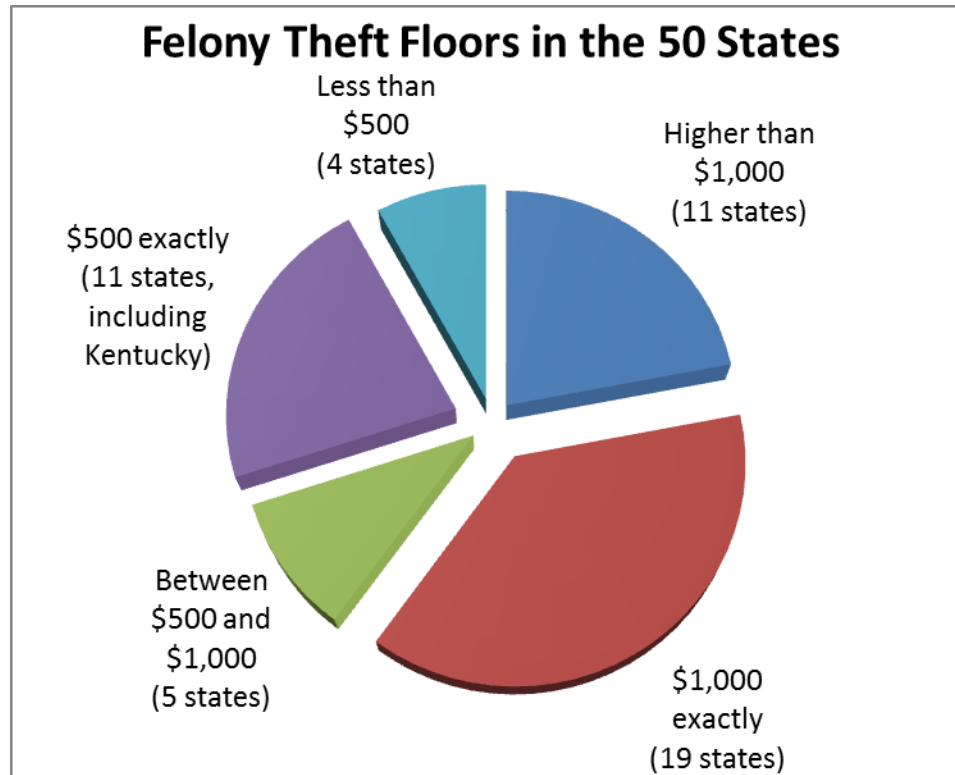
1. Make PFO a discretionary rather than mandatory finding by a jury at sentencing
2. Eliminate PFO enhancements for non-violent felonies
3. Repeal 10-year parole eligibility requirement for PFO, First-Degree – **a recommendation of the 2008 KY Criminal Justice Council**
4. Establish “trigger” offenses that are required for PFO to apply
5. Limit PFO application to those who have not had a substantial break in criminal activity
6. Eliminate use of prior felonies that have not resulted in imprisonment from PFO – **a recommendation of the 2008 KY Criminal Justice Council**
7. Eliminate PFO 2d – **a recommendation of the 2008 KY Criminal Justice Council**

# Increasing the Felony Theft Threshold Is Overdue and Makes Sense

## Reasons to Support an Increase in the Felony Theft Threshold

- **Recognizes effect of rising prices** – An item worth \$500 is not as valuable as it once was.
- **Reduces corrections costs for non-violent property crimes** – Changing the threshold would not change burglary or robbery laws, but only affect sentences for non-violent theft. Someone stealing a \$500 iPad deserves punishment, but not up to 5 years in prison.
- **Speeds resolution of theft cases** – More cases would be handled in District Court rather than going through lengthy Grand Jury and Circuit Court process; restitution can be ordered quicker.
- **Reduces crippling felony convictions** – A felony conviction devastates a person's ability to get a job and meet their obligations; low-level theft should not carry this life sentence.

## 30 States have felony floors \$1,000 or higher



**Only 15 States have felony floors \$500 or lower,  
as Kentucky does**

As of January 1, 2014, there were  
**758 inmates** serving felony sentences for only  
non-violent theft convictions.

Over the course of a year, this number of  
inmates **costs the state \$9,570,015** to  
incarcerate

# Proposed adjustments to Kentucky violent offender law (KRS 439.3401)

1. Reinstate 50% parole eligibility for violent offenders, as originally passed in 1986 and maintained until 1998 when Congress conditioned federal funds on passage of 85% parole eligibility. (No federal funds would now be lost by reverting to the prior law.)
2. Limit the category of violent offenders to those convicted of:
  - a. Murder
  - b. First-Degree Rape
  - c. First-Degree Sodomy
  - d. First-Degree Robbery with a Firearm
  - e. First-Degree Burglary with a Firearm
  - f. First-Degree Assault



# Kentuckians who would be eligible for Class D felony expungement

**94,645\***

Current KRS 431.078(5) \$100 fee:

\$50 to the general fund, \$4.7 million

\$50 into a trust and agency account for deputy clerks, \$4.7 millions

\*KSP, AOC Data

## **Changes needed for Probation Revocation actions**

### **439.3106 Sanctions supervised individuals are subject to.**

Supervised individuals shall be subject to:

- (1) Violation revocation proceedings and possible incarceration for failure to comply with the conditions of supervision when such failure constitutes a significant risk to prior victims of the supervised individual or the community at large, and cannot be appropriately managed in the community; or
- (2) Sanctions other than revocation and incarceration as appropriate to the severity of the violation behavior, the risk of future criminal behavior by the offender, and the need for, and availability of, interventions which may assist the offender to remain compliant and crime-free in the community.

**Effective:** June 8, 2011

**History:** Created 2011 Ky. Acts ch. 2, sec. 59, effective June 8, 2011.

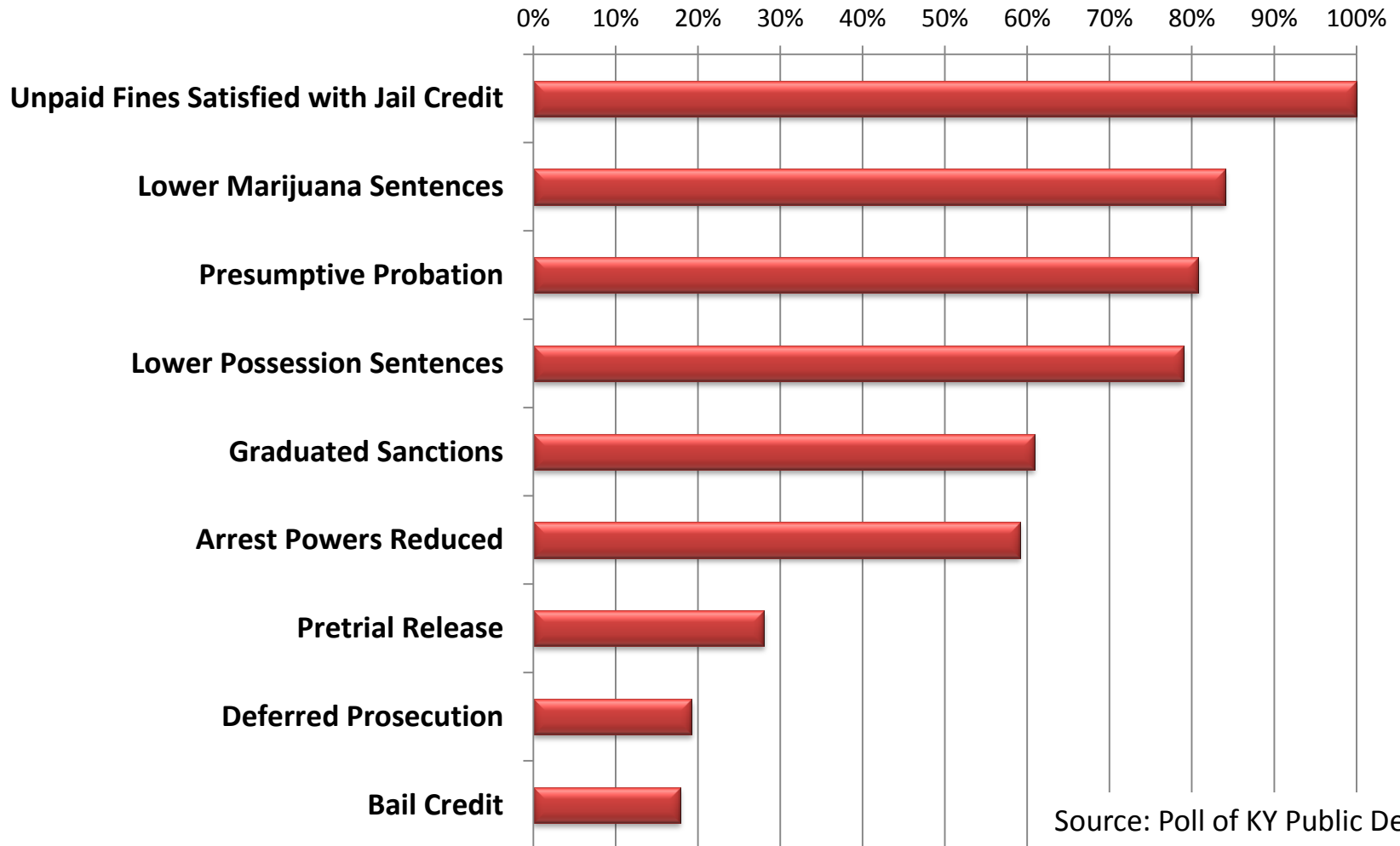
Supervised individuals **who fail to comply with the conditions of supervision** shall be subject to:

(1) Sanctions other than revocation and incarceration as appropriate to the severity of the violation behavior, the risk of future criminal behavior by the offender, and the need for, and availability of, interventions which may assist the offender to remain compliant and crime-free in the community. **If the case is brought before it, the court or the board shall consider the system of graduated sanctions for violations of conditions of supervision authorized by KRS 439.3107 to assess the appropriate sanctions; or**

(2) Violation revocation proceedings and possible incarceration when their failure to comply with the conditions of supervision constitutes a significant risk to prior victims of the supervised individual or the community at large, and cannot be appropriately managed in the community. **Supervised individuals pose a “significant risk” when their behavior involves violence or threats of violence. The findings required in this subsection shall be made by clear and convincing evidence. The court or the board shall make specific findings of fact and conclusions of law stating the requirements for revocation in this subsection have been met.**

# Public Defenders' Perspective on HB 463

## % of Defender Offices that Report Success:



Source: Poll of KY Public Defenders  
Sept 1-11, 2015 (78 responses)

# Public Defenders' Perspective on HB 463

% of Defenders that agree with these statements:

Cash bonds that cannot be met are still regularly set for low and moderate risk defendants	94%
Bail credit is routinely denied	85%
Prosecutors decline to offer Deferred Prosecution in any (or almost any) case	80%
Defendants arrested for felony drug possession are often charged with other felonies (Tampering, Trafficking) to increase the maximum sentence and keep PFO eligibility	75%
"Peddlers" who should be charged with low-level trafficking are charged with high-level trafficking using the 90-day window.	29%

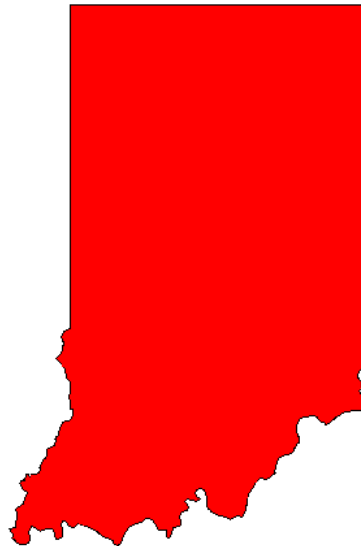
Source: Poll of KY Public Defenders  
Sept 1-11, 2015 (78 responses)



# The business of implementing HB 463

**Notwithstanding any other provision of law, an attorney or his or her non lawyer assistant as defined in KRS 31.100 may possess and use a personal electronic device, including cellular telephones, within a local correctional facility as long as possession of the device is maintained by the attorney or his or her non lawyer assistant**

Texas, Indiana, Missouri are lowering  
incarceration costs safely





A black outline map of the state of Kentucky, showing its characteristic shape with a small circle at the western tip representing the Gateway Arch. The text is centered within the map's boundary.

**KY can safely save \$ in 2016**